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BOOK REVIEWS

INTERNATIONAL LAW AND THE WORLD WAR, by James Wilford Garner, Professor of Political Science in the University of Illinois. (New York: Longmans, Green and Co., 1920, vols. 2, pp. xviii, 524, 534.)

The legal literature of the war is already very voluminous and to it are now added two large volumes by Professor Garner, who has sought to "review the conduct of the belligerents in respect to their interpretation and application of the rules of international law, compare it with the opinions of the authorities and the practice in former wars and wherever infractions appeared, to endeavor to determine the responsibility and to place it where it properly belonged."

There is no question that Professor Garner's volumes are comprehensive, erudite, and carefully prepared. They will be indispensable in courses on international law and so far as the laws of warfare and neutral rights and duties are concerned, they will suffice without any other text. The discussion of the rules accepted when the war began is in all cases adequate and there are ample quotations from all the authorities. The reader will find himself questioning, however, how far Professor Garner's work will be definitive; how greatly it differs—except as to scope, citation of authority, and absence of passion,—from *ex parte* statements like Coleman Phillipson's *INTERNATIONAL LAW AND THE GREAT WAR* (1915), or from the pamphlet literature dealing, for example, with Germany's war crimes in Belgium and France, and the submarine campaign.

Professor Garner himself recognizes this difficulty. "With the archives of foreign offices closed to historians and investigators," he says, "and with newspapers and books published in enemy countries shut out by blockades and censorship, important sources of information were necessarily inaccessible to me. After the United States became a belligerent, not even technical and scientific publications were admitted from enemy countries. In consequence of this, the German defence to many charges against them for violating the law was not always known to me, or was known only through newspaper dispatches from neutral countries. Nevertheless, the views of the German jurists on all questions of international law, the rules of which the Germans were charged with disregarding, were so distorted and colored by partisanship that it may be doubted whether their inaccessibility was a loss of any real consequence, and I may add that Professor Oppenheim¹ shared with me this view as to the untrustworthiness of German authority."

One wonders whether the author of a "treatise" should dismiss evidence as "untrustworthy" before he has seen it and without presenting

¹ Professor Garner's work appears as one of the "CONTRIBUTIONS TO INTERNATIONAL LAW AND DIPLOMACY", which Professor Oppenheim edited. The manuscript was prepared in consultation with him, but his death occurred before the completion of the introductory chapter which he had planned to contribute.

it to his readers. There are, furthermore, occasional evidences in the text that all German international lawyers and apologists were not untrustworthy. The German prize courts, in the few cases which were decided and which Professor Garner quotes, were, in their interpretation of the existing rules, not poles apart from the English jurists. The author is generous in recognizing, also, that in a few respects, Germany was not a terrible offender. "Comparing German policy in respect to the treatment of enemy property with that of Great Britain and France, we must admit that, in the beginning at any rate, it was more liberal and more in accord with Rousseau's theory that war is a contest between armies and not peoples."² Or again, with respect to trading with the enemy, "German legislation was far less elaborate than that of either Great Britain or France and, it may be added, was less rigorous."³

Text writers, the author says, "are in a sense the guardians and defenders of the law of nations" and in dealing with the infractions of international law during the war, they should place the blame wherever it belongs, unsparingly, and with equal severity, no matter who the belligerent. England's blockade of Germany and restrictions on neutral trade are fully considered, but with slight exculpation or criticism. The arguments *pro* and *con* are stated. There is an excellent consideration of the Japanese violation of Chinese neutrality and the allied treatment of Greece, but the author is obviously worried by the difficulty of making these acts agree with the rules of international law. "It is hardly fair," he says, "to judge such acts on the basis of the ordinary normal rules of international law governing the rights of neutrals." The situation was "anomalous", and he resorts to the argument that the measures toward China and Greece "were wholly different in spirit and purpose from the German violation of Belgian neutrality"⁴ and the "manner in which they were carried out, and the treatment which the inhabitants received at the hands of the occupying forces in the two cases were widely different."⁵ No one will dispute this conclusion, but Professor Garner's mild words on these points, in connection with his unwillingness to delay the publication of his book until he could examine the German materials, may well make one think that the present edition is slightly *ex parte* and that a second edition will be necessary before the author's industry and scholarship produce the scientific treatise which they should.

In any event, it is not probable that another writer will soon attempt a study of international law during the war on the scale of these two volumes, even though the present treatment is limited to the more important points and to the policies and conduct of the principal belligerents and neutral powers. There is an introductory chapter dealing with the status of international law at the outbreak of the war, and then consideration is given the legality of the measures adopted by the belligerents toward each other. Interferences with neutral rights are reserved for later treatment. The author discusses the status of

² p. 99.

³ p. 239.

⁴ Vol. II, p. 241.

⁵ p. 255.

enemy diplomatic and consular representatives; the treatment of enemy aliens (three chapters); the disposition of merchant vessels in belligerent ports at the beginning of hostilities; the transfer of merchant vessels from belligerent to neutral flags; trade and intercourse with the enemy (with only a very mild protest against Mr. Palmer's regime as Alien Property Custodian); the effects of the war on contracts and partnerships; the use of forbidden weapons and instrumentalities; the treatment of hostages and the employment of civilians as shields against attack; the devastation of enemy territory; the use of submarine mines and maritime war zones; the legality of submarine warfare; the status of defensively armed merchant vessels; land and naval bombardments; the destruction of monuments, buildings, and institutions especially protected by the law of nations; aerial warfare; violations of the Geneva convention; the treatment of prisoners (two chapters); military government in Belgium (two chapters); contributions, requisitions, and forced labor; collective fines and community responsibility, and the deportation of civilian populations from occupied territories. It is a restrained but impressive indictment of Germany's methods of making war.

The sections dealing with neutral rights begin with two chapters on the German invasion of Belgium, and then Professor Garner considers the invasion of Luxemburg, the Japanese violation of Chinese territory, and the occupation of Greece by England and France. Six chapters are devoted to the destruction of neutral merchant vessels; contraband; the right of search; the doctrine of continuous voyage; blockades; interference with the mails and persons of enemy nationality on neutral vessels; the exportation of arms and munitions to the belligerents; and miscellaneous questions of neutrality. Final chapters discuss the effect of the war on international law, the enforcement of international law, and the outlook for the future. Like most jurists, the author is hopeful.

There is an ample bibliography and an excellent index. The footnotes running through the two volumes are encyclopaedic in character, and the work will be indispensable to teachers and students of international law. That Professor Garner has written a treatise which is in some respects *ex parte* will not reduce its usefulness or even, if this point is kept in mind, its authority. But it is a pity that so much industry and erudition have not produced a study of international law and the war which would seem to be definitive.

L. R.